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THE DOMICIL OF A DESERTED WIFE.—The rule of the common law was that upon marriage, the domicile of the wife became merged in that of her husband, and that her domicile changed with his, without regard to her actual residence. *Warrender v. Warrender* (1835) 2 Cl. & F. 488, 524; *Harteau v. Harteau* (Mass. 1833) 14 Pick. 181; Jacobs, Domicil § 209. This rule, based upon the common law principle of the legal identity of husband and wife, the right of control which the husband has over the wife, and the duty of the wife to make her home with her husband, was subject to a few well-established exceptions. Thus, where the husband and wife were living apart and divorced a mensa et thoro, it was held that the wife was entitled to establish a domicile apart from that of her husband. *Barber v. Barber* (U. S. 1858) 21 How. 582. The same was held where the husband and wife had expressly agreed to live apart. *Rundle v. Van Inwegen* (N. Y. 1886) 9 Civ. Proc. Rep. 330; contra, *Warrender v. Warrender*, supra. Likewise, when a wife had been deserted and had cause for divorce, she might acquire a separate domicile for the purpose of securing the decree. *Ditson v. Ditson* (1856) 4 R. I. 87.

The earlier authorities, while generally recognizing these exceptions, manifested great hesitation to extend them any further than was absolutely necessary. *Yelverton v. Yelverton* (1859) 1 Swab. & Tr. 574; *Dolphin v. Robbins* (1859) 7 H. L. Cas. 390; *Dorsey v. Dorsey* (Pa. 1838) 7 Watts 349; *Maguire v. Maguire* (Ky. 1838) 7 Dana 181; *Greene v. Greene* (Mass. 1831) 11 Pick. 410; *Warrender v. Warrender*, supra; Jacobs, Domicil §§ 224a, 225. It was admitted that a deserted wife might acquire a domicile separate from that of her husband for the purpose of securing a divorce, because it was absolutely necessary for her to do so in order to secure her rights and to prevent a failure of justice. *Harteau v. Harteau*, supra; Jacobs, Domicil § 221. But, as stated in Jacobs, § 226, while she might be allowed to acquire a separate domicile where the express object in doing so was to show that the marriage relation ought to be dissolved, she should not be allowed to do so for any other purpose. See also, *Harteau v. Harteau*, supra p. 185; *Burtis v. Burtis* (1894) 161 Mass. 508; *Yelverton v. Yelverton*, supra; 2 Bishop, Marriage and Divorce, 4th ed., § 129.

This, however, would seem to be a most arbitrary as well as unsatisfactory limitation of the cases in which an exception to the general rule was to be justified. The later cases seem to base the exceptions upon the broader and more logical principle that where the reason for the rule fails, the rule itself must fail. In other words, when the acts of the husband and wife are such as to utterly repel the fiction of legal identity, and to indicate that the husband has relinquished his right of control over the wife and repudiated his marital obligations, the wife should have the right to establish a separate domicile, whenever the necessity arises for her to do so. *Barber v. Barber*, supra; *Hunt v. Hunt* (1878) 72 N. Y. 217; *Cheever v. Wilson* (1869) 9 Wall. 108; *Jeanness v. Jeanness* (1865) 24 Ind. 355.

This reasoning seems unimpeachable, and is carried to its logical result in a recent case holding that where a husband has deserted his wife, she may establish her citizenship and residence in a different state from that of her husband for the purpose of bringing suit in a federal court to recover damages for the alienation of her husband's affections by a third party. *Gordon v. Post* (1905) 140 Fed. Rep. 79. The acts of the husband, indicating clearly that he had repudiated absolutely all the rights and duties of the marital relation, certainly justify the conclusion that he has forfeited one of the incidents of that relation, control over the domicile of the wife. See Minor, Conflict of Laws § 47. The decision is in direct accord with the legislative and judicial tendency to abandon the fiction of legal identity of husband and wife. See *Shute v. Sargent* (1892) 67 N. H. 305.

The jurisdictional question involved in this case indicates the importance of knowing what rule should be applied in determining the domicile of a deserted wife. The same point is illustrated in a New York case, holding that a wife living apart from her husband might so acquire a separate domicile, that upon her death her personal property would descend according to the laws of the state in which she was living, instead of those of the state in which her husband resided. *Matter of Florance* (N. Y. 1889) 54 Hun 328.